account agreement; it was not necessary that it should also be stated in the memorandum of deposit.

It seemed to me quite clear that the defendant was one of the many casualties of the Pan Electric debacle. He was a speculator in the stock market who got his fingers burnt. Instead of owning up to his debts, he sought to create issues where none existed. Before the assistant registrar, three other issues were raised: (i) no provision in the agreement to charge interest; (ii) payments made by the defendant were not taken into account; and (iii) the account agreement had expired. He had abandoned these points and had not pursued them before me. On the facts of this case, I could see no legitimate issues that should go to trial. The defendant was trying hard to find an issue. His counsel submitted that the defendant ought to be given an opportunity to prove negligence on the part of the plaintiffs which is a question of fact. But before leave to defend shold be granted, some basis must be shown that the plaintiffs were negligent. The defendant had failed to show any such basis. A bald allegation would not do. Many letters were written by the plaintiffs to the defendant requiring him to top up his margin account. These were ignored. A final letter of demand of 2 July 1986 which also threatened that the matter would be referred to their solicitors brought no reply or contention to the contrary. I was satisfied that the defendant had no defence and was desperately fishing for one. He was only seeking to delay judgment. Accordingly, I dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *Sim Hill Tan & Wong; R Raman & Partners.*

Reported by *Terence Tan Bian Chye*

MALAYSIAN REPORTS

Rajoo s/o Ramasamy v Inspector-General of Police & Ors

SUPREME COURT (KUALA LUMPUR) — CRIMINAL APPEAL NO 05-167-89
HASHIM YEOP A SANI CJ (MALAYA), MOHAMED YUSOFF AND GUNN CHIT TUAN SCJJ
16 FEBRUARY 1990

Administrative Law — Habeas corpus — Person detained under Dangerous Drugs (Special Preventive Measures) Act 1985 for two years — Appeal to High Court and Supreme Court — Extension of time for Advisory Board to consider representations made by detainee — Whether Yang di-Pertuan Agong has power to allow the extension after the period of three months has expired — Interpretation and General Clauses Ordinance 1948, s 39 — Interpretation Act 1948 and 1967, s 2 — Federal Constitution, arts 151(1)(b) & 160(1)

Preventive Detention — Detention under Dangerous Drugs (Special Preventive Measures) Act 1985 — Reference to Advisory Board — Whether Yang di-Pertuan Agong has power to allow extension of time for reference to Advisory Board after period of three months has expired — Dangerous Drugs (Special Preventive Measures) Act 1985, ss 3(1) & 6(1) — Interpretation and General Clauses Ordinance 1948, s 39 — Interpretation Act 1948 and 1967, s 2 — Federal Constitution, arts 151(1)(b) & 160(1)

In this case the appellant had been detained under s 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 for a period of two years with effect from 13 May 1988. The appellant made his representations to the Advisory Board under the provisions of art 151(1)(a) of the Federal Constitution. The date for hearing of his representations was fixed on 20 July 1988. In the meanwhile, the appellant applied for a writ of habeas corpus and this was granted by the High Court on 14 July 1988 and he was ordered to be released. The respondents appealed to the Supreme Court against the order of the High Court. In the meantime, another order for the detention of the appellant was issued and he was arrested and detained. The appellant filed a second application for a writ of habeas corpus. The Supreme Court on 30 January 1989 quashed the decision of the High Court and set aside the order for the grant of habeas corpus. Following the Supreme Court's decision, the minister revoked the second detention order on 24 February 1989. On 28 February 1989, the Yang di-Pertuan Agong allowed the extension of ten months and nine days commencing from 23 May 1988 within which the Advisory Board has to consider the representations made by the appellant and to make its recommendations to the Yang di-Pertuan Agong. The Advisory Board heard the representations and on 27 March 1989 made its recommendations to the Yang di-Pertuan Agong. In accordance with these recommendations, the Yang di-Pertuan Agong confirmed the first detention order made against the appellant. The appellant applied for habeas corpus, which was dismissed. On appeal, the sole issue is whether art 151(1)(b) of the Federal Constitution gives power to the Yang di-Pertuan Agong to allow the extension of time for the Advisory Board to consider the representations and to make the recommendations under that article after the period of three months stated in that article has expired.

Held, allowing the appeal:

(1) Reading art 151(1)(b) of the Federal Constitution as a whole, it is implicit that if any extension of time is granted it should be granted before the expiry of the period of three months because the express injunction is that no person shall otherwise continue to be detained.

(2) It is difficult to construe that there is power to extend the time after the expiry of the three month period when s 39 of the Interpretation and General Clauses Ordinance 1948 was expressly left out from the Eleventh Schedule to the Federal Constitution.

[Didalam kes ini perayu telah ditahan dibawah s 6(1) Akta Dadah Berbahaya (Langkah-langkah Pencegahan Khas) 1985, bagi tempoh dua tahun dari 13 Mei 1988. Perayu telah membuat rayuan kepada Lembaga Penasihat dibawa peruntukan Perkara 151(1)(a) Perlembagaan Persekutuan. Tarikh mendengar rayuan itu telah ditetapkan pada 20 Julai 1988. Dalam pada itu perayu telah memohon writ habeas corpus dan ini telah dibenarkan oleh Mahkamah Tinggi dan ia diperintah dilepaskan. Responden-responden telah merayu kepada Mahkamah Agung terhadap perintah Mahkamah Tinggi itu. Sementara itu suatu perintah lain telah dibuat untuk tahanan perayu dan ia telah ditangkap dan ditahan. Perayu telah menfailkan permohonan kedua untuk writ habeas corpus. Mahkamah Agung pada 30 Januari 1989 telah membatalkan keputusan Mahkamah Tinggi dan mengenepikan perintah habeas corpus. Selepas keputusan Mahkamah Agung itu menteri telah membatalkan perintah tahanan kedua pada 24 Februari 1989. Pada 28 Februari 1989 Yang di-Pertuan Agong telah membenarkan perlanjutan sepuloh bulan dan sembilan hari mulai dari 23 Mei 1988 didalam masa mana Lembaga Penasihat hendaklah menimbangkan rayuan yang dibuat oleh perayu dan membuat syornya kepada Yang di-Pertuan Agong. Lembaga Penasihat itu telah mendengar rayuan itu dan pada 27 Mac 1989 membuat syornya kepada Yang di-Pertuan Agong. Mengikut syor-syor itu Yang di-Pertuan Agong telah mengesahkan perintah tahanan yang pertama terhadap perayu. Perayu memohon mendapat perintah habeas corpus, yang tidak dibenarkan. Dalam rayuan ini, issu yang tunggal ialah samaada Perkara 151(1)(b) Perlembagaan Persekutuan memberi kuasa kepada Yang di-Pertuan Agong membenarkan perlanjutan masa bagi Lembaga Penasihat menimbangkan rayuan-rayuan dan membuat syor-syornya dibawah Perkara itu selepas masa tiga bulan yang disebutkan didalam Perkara itu telah tamat.

Diputuskan, membenarkuan rayuan itu:

(1) Jika Perkara 151(1)(b) dibaca keseluruhannya adalah terkandung didalamnya jika perlanjutan masa diberi ia hendaklah diberi sebelum tamatnya masa tiga bulan oleh kerana perintah utama yang tertulis ialah tiada seseorang boleh sebaliknya terus ditahan.

(2) Adalah sukar hendak mentafsirkan bahawa terdapat kuasa melanjutkan masa selepas tamatnya tida bulan itu apabila s 39 Ordinan Tafsiran dan Fasal-fasal Am 1948 telah dengan tegas tidak dimasukkan didalam Jadual Kesebelas Perlembagaan Persekutuan.]

Legislation referred to

Dangerous Drugs (Special Preventive Measures) Act 1985 ss 3, 6(1)

Federal Constitution arts 151(1)(a), (b), 160(a) Eleventh Schedule

Interpretation Act 1948 and 1967 (Rev 1989) ss 2(1), (2), 109

Interpretation and General Clauses Ordinance 1948 s 39

Appeal from: Criminal Application No 44-56-89 (High Court, Penang).

Karpal Singh for the appellant.

Balia Yusuf bin Wahi (Senior Federal Counsel) for the respondents.

Cur Adv Vult

Hashim Yeop A Sani CJ (Malaya) (delivering the judgment of the court): The appellant had been detained under powers conferred by s 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act') for a period of two years with effect from 13 May 1988 at the Pusat Pemulihan Akhlak, Muar, Johore. On 22 May 1988, the appellant made his representations to the Advisory Board under the provisions of art 151(1)(a) of the Federal Constitution. The Advisory Board then fixed the hearing of his representations on 20 July 1988. In the meanwhile, however, pursuant to his application for a writ of habeas corpus the High Court sitting in Kuala Lumpur granted his application for habeas corpus on 14 July 1988 and directed his release on the same day. The respondents, however, appealed to the Supreme Court against the High Court's decision.

The appellant's freedom was shortlived for while the appeal was pending he was re-arrested on 17 September 1988 pending enquiries under s 3(1) of the Act. On 14 November 1988, he was detained under another order ('the second detention order') under s 6(1) of the Act for a period of two years commencing from 15 November 1988. The appellant then filed his second application for a writ of habeas corpus, this time in the High Court, Pulau Pinang.

On 30 January 1989, the Supreme Court, after hearing the appeal of the appellant, quashed the decision of the High Court Kuala Lumpur, setting aside the order for the grant of habeas corpus. Following the Supreme Court's decision, the minister revoked the second detention order on 24 February 1989.

On 28 February 1989, pursuant to art 151(1)(b) of the Federal Constitution, the Yang di-Pertuan Agong allowed the extension of time of ten months and nine days commencing from 23 May 1988 within which the Advisory Board had to consider the representations made by the appellant and to make its recommendations thereon to the Yang di-Pertuan Agong. The Advisory Board heard his representations and on 27 March 1989 made its recommendations to the Yang di-Pertuan Agong. In accordance with these recommendations the Yang di-Pertuan Agong confirmed the first detention order made against the appellant.

For convenience the provision of art 151(1)(b) of the Constitution is reproduced below:

Where any law or ordinance made or promulgated in pursuance of this Part provides for preventive detention —

(b) No citizen shall continue to be detained under that law or ordinance unless an advisory board constituted as mentioned in Clause (2) has considered any representations made by him under paragraph (a) and made recommendations thereon to the Yang di-Pertuan Agong within three months of receiving such representations, or within such longer period as the Yang di-Pertuan Agong may allow.

The sole issue here is whether art 151(1)(b) of the Federal Constitution gives power to the Yang di-Pertuan Agong to allow the extension of time for the Advisory Board to consider the representations and to make the recommendations under that article *after* the period of three months has expired. Article 160(1) of the Constitution states as follows:

The Interpretation and General Clauses Ordinance 1948, *as in force immediately before Merdeka Day* shall, *to the extent specified in the Eleventh Schedule*, apply for the interpretation of this Constitution as it applies for the interpretation of any written law within the meaning of that Ordinance, but with the substitution of references to the Yang di-Pertuan Agong for references to the High Commissioner.

In the Eleventh Schedule to the Constitution, a number of provisions from the Interpretation and General Clauses Ordinance 1948 ('the 1948 Ordinance') are reproduced and specified for the purpose of interpretation of the Constitution. However, s 39 of the 1948 Ordinance is excluded from the Schedule. Section 39 of the 1948 Ordinance reads as follows:

Where in any written law a time is prescribed for doing any act or taking any proceeding and power is given to a court or other authority to extend such time, unless the contrary intention appears the power may be exercised by the court or other authority although the application for the same is not made until after the expiration of the time prescribed.

What was argued before the learned judge was that because s 39 of the 1948 Ordinance was excluded from the Eleventh Schedule to the Constitution, there is no power to extend time after the expiry of the period prescribed in art 151(1)(b) of the Constitution. That argument was apparently accepted by the learned judge. However, the learned judge went further and purporting to invoke s 45 and s 109 of the Consolidated Interpretation Acts 1948 and 1967 (Rev 1989) concluded that there is such power to extend the time under art 151(1)(b) of the Constitution.

Section 2(1) and (2) of the Consolidated Interpretation Acts read as follows:

(1) Subject to this section, Part I of this Act shall apply for the interpretation of and otherwise in relation to —

(a) this Act and all Acts of Parliament enacted after 18 May 1967;

(b) all laws, whether enacted before or after the commencement of this Act, revised under the Revision of Laws Act 1968;

(c) all subsidiary legislation made under this Act and under Acts of Parliament enacted after the commencement of this Act;

(d) all subsidiary legislation, whether made before or after the commencement of this Act, revised under the Revision of Laws Act 1968;

(e) all subsidiary legislation made after 31 December 1968, under the laws revised under the Revision of Laws Act 1968.

(2) Part I shall not apply for the interpretation of or otherwise in relation to any written law not enumerated in subsection (1).

It can be observed that s 45 of the Consolidated Acts comes under Part I and therefore cannot by virtue of s 2(2) of the Consolidated Acts apply for the interpretation of the Constitution. It is also to be observed that s 109 of the Consolidated Acts appears in Part II of the Consolidated Acts and is a reproduction of s 39 of the old 1948 Ordinance.

Thus what we have now is that art 160 of the Constitution expressly prescribes that the provisions of the 1948 Ordinance *as specified* in the Eleventh Schedule shall apply for the interpretation of the Constitution. Against that we also have the provisions of the Consolidated Interpretation Acts which are not applicable for the interpretation of the Constitution.

Encik Balia Yusof, learned senior federal counsel, has urged us to consider the unique background of this case which had in fact necessitated the Yang di-Pertuan Agong to allow an extension of ten months and nine days purporting to act under the said article of the Constitution. But we cannot overlook the injunction contained in art 151(1)(b) of the Constitution which expressly provides that *no citizen shall continue to be detained* unless the Advisory Board has made recommendations to the Yang di-Pertuan Agong within three months of receiving the representations. The exception is only where there is an extension of time granted under that clause of the article. Reading that clause as a whole, it is implicit that if any extension is to be granted it should be granted before the expiry of the period of three months because the express injunction is that no person shall otherwise continue to be detained.

Article 151(1)(b) of the Constitution in its original version carried no power to extend the period beyond the three months prescribed. Parliament amended that article in 1976 to include the power to extend the period under that clause. Parliament should have then also amended the Eleventh Schedule to the Constitution to insert s 39 of the 1948 Ordinance to enable the power to extend time to be exercised after the expiry of period prescribed. It is difficult to construe that there is power

to extend the time after the expiry of the three months period when s 39 of the 1948 Ordinance was expressly left out from the Eleventh Schedule to the Constitution. The appeal was accordingly allowed. Application for writ of habeas corpus was granted.

Appeal allowed.

Solicitors: *Karpal Singh & Co.*

Reported by *Prof Ahmad Ibrahim*

Hong Siew Sin & Anor v Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor

SUPREME COURT (KUALA LUMPUR) — CRIMINAL APPEAL NOS 05-128-89 AND 05-129-89
HASHIM YEOP A SANI CJ (MALAYA), MOHAMED YUSOFF AND GUNN CHIT TUAN SCJJ
16 FEBRUARY 1990

Preventive Detention — Detention under Dangerous Drugs (Special Preventive Measures) Act 1985 — Extension of orders — Whether extension orders complied substantially with the requirements of the Act — Dangerous Drugs (Special Preventive Measures) Act 1985, ss 6(1) & 11A

In this case, the two appellants had been detained under the Dangerous Drugs (Special Preventive Measures) Act 1985 and the Minister of Home Affairs had extended the detention of the appellants. It was argued that the extensions were invalid because the dates referred to in the extension orders as the commencement dates coincided with the last dates of the first detention orders. The extension orders read, as regards the period of extension, to the effect 'for two further years to begin from the date of the expiration of the detention order' but immediately after these words there appeared in each case the words to the effect 'that is from 4 May 1989' in the case of the first appellant and 'that is from 13 May 1989' in the case of the second appellant. The dates referred to in both the orders were actually the dates of the expiry of the current detention orders. The learned trial judge in this case applied the maxim 'de minimis non curat lex' and dismissed the application. The appellants appealed.

Held, dismissing the appeals:

(1) It is clear from the language of s 11A(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 that the extension order under that section must commence immediately upon the expiration of the period of the current order.

(2) Taken as a whole, the extension orders have in fact substantially complied with s 11A of the Dangerous Drugs (Special Preventive Measures) Act 1985. The extension orders should be read as a whole and the words specifying the dates should be ignored either as a genuine mistake or a miscalculation of the dates or a trifling irregularity or simply superfluous.

Cases referred to

1 *Makhan Singh* v *State of Punjab* [1964] 2 Cr LJ 217 (refd)
2 *Greene* v *Secretary of State for Home Affairs* [1942] AC 284 (refd)

Legislation referred to

Dangerous Drugs (Special Preventive Measures) Act 1985 ss 6(1), 11A(1)

Appeal from: Criminal Application No 44-35-89 (High Court, Penang)

Karpal Singh for the appellants.
Balia Yusof bin Wahi (Senior Federal Counsel) for the respondents.

Cur Adv Vult

[Di dalam kes ini, kedua-dua perayu telah ditahan di bawah Akta Dadah Berbahaya (Langkah-langkah Pencegahan Khas) 1985 dan Menteri Hal Ehwal Dalam Negeri telah melanjutkan tahanan mereka. Hujah yang telah dibuat oleh mereka ialah perlanjutan itu tidak sah oleh kerana tarikh yang disebutkan di dalam perintah-perintah perlanjutan sebagai tarikh permulaan adalah sama dengan tarikh akhir tahanan mereka. Perintah-perintah perlanjutan itu menyebut 'selama tempoh dua tahun selanjutnya mulai dari tarikh tamat tempoh perintah tahanan itu', akan tetapi sejurus selepas itu disebutkan bagi tiap-tiap perintah itu perkataan 'iaitu dari 4 Mei 1989' bagi perayu pertama dan 'iaitu dari 13 Mei 1989' bagi perayu kedua. Tarikh yang disebut di dalam kedua-dua perintah itu sebetulnya tarikh tamatnya perintah tahanan yang berkuatkuasa pada masa itu. Hakim yang arif telah mengenakan maxim 'de minimis non curat lex' (bermaksud undang-undang tidak menghiraukan perkara yang sangat kecil). Perayu-perayu telah membuat rayuan.

Diputuskan, menolak rayuan-rayuan itu:

(1) Adalah jelas dari bentuk bahasa s 11A(1) Akta Dadah Berbahaya (Langkah-langkah Pencegahan Khas) 1985 bahawa perintah perlanjutan di bawah seksyen itu hendaklah bermula terus selepas tamatnya masa perintah tahanan yang berkuatkuasa pada masa itu.

(2) Dipandang dari segi keseluruhannya, perintah-perintah perlanjutan itu telah mematuhi s 11A Akta Dadah Berbahaya (Langkah-langkah Percegahan Khas) 1985. Perintah-perintah perlanjutan itu hendaklah dibaca keseluruhannya dan perkataan-perkataan menyebut tarikh-tarikh itu hendaklah tidak diendahkan sebagai kesilapan tidak sengaja atau kiraan yang salah mengenai tarikh-tarikh itu atau perkara luar aturan yang sangat kecil atau yang lebih daripada yang diperlukan.]

Hashim Yeop A Sani CJ (Malaya) (delivering the judgment of the court): Both these appeals were concerned with only one crucial issue. That issue is whether the orders which extended the detention of the appellants under s 11A of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act') are invalid because the dates referred to in the orders as the commencement dates coincide with the last dates of the first detention orders. According to Encik Karpal Singh, counsel for the appellants, this irregularity amounted to double detention, citing *Makhan Singh* v *State of Punjab*.[1]

According to s 11A(1) of the Act, the minister may at any time before the expiration of the duration of a detention order under s 6(1) of the Act direct that the duration of the order be extended for a period not exceeding two years commencing immediately upon the expiration of the current detention order. It is clear from the language of